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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN P. PANUNTO and VAN HO ROBIN HO

Appeal 2009-002687
Application 10/660,533
Technology Center 3600

Decided: January 8, 2010

Before ALLEN R. MACDONALD, *Vice Chief Administrative Patent Judge*,
and JOHN C. KERINS and FRED A. SILVERBERG, *Administrative Patent
Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John P. Panunto et al. (Appellants) seek our review under 35 U.S.C.
§ 134 of the final rejection of claims 2-6, 8-10, 12 and 13. We have
jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to a bottom feed dispenser for dispensing flat media seriatim from a discharge end thereof (Spec. 1, 5: ¶¶ [0001] and [0012]).

Claim 13, reproduced below, is representative of the subject matter on appeal.

13. A dispenser for dispensing flat media seriatim to a discharge end, comprising:
 - a media storage bin for storing a stack of flat media elements, the bin having a bottom end;
 - a driven rear conveyor extending under the bottom end of the media storage bin for carrying away flat media elements from the bottom of the stack in a shingled relationship wherein the flat media elements lie flat on the conveyor with the leading edge of one said media element overlying the trailing edge of a preceding said media element, the driven rear conveyor being driven intermittently at a first linear velocity V_R ;
 - a coarse media separator comprising a first nip roller defining a nip with the rear conveyor, said first nip roller cooperating with the rear conveyor to feed said media elements off the bottom of the stack onto said rear conveyor in said shingled relationship;
 - a first height adjustment mechanism for setting a first vertical spacing between the first nip roller and the rear conveyor to allow said media elements to pass through said nip in said shingled relationship;

a driven front conveyor downstream of said rear conveyor for receiving the flat media elements from the rear conveyor, the driven front conveyor being driven intermittently at a second linear velocity V_F ;

a single media separator comprising a second nip roller cooperating with said driven front conveyor to define a nip to separate said shingled media elements received from the rear conveyor into single media elements;

a second height adjustment mechanism for setting a second vertical spacing between the second nip roller and the front conveyor to allow said media elements to pass through said nip one at a time as separated media elements;

a transport conveyor for carrying the single flat media elements from said front conveyor to said discharge end, the transport conveyor being driven intermittently at a third linear velocity V_T ; and

a first sensor responsive to the presence or absence of a media element at the discharge end to stop operation of the transport conveyor;

a second sensor responsive to the presence or absence of a media element on the transport conveyor to stop operation of the front conveyor; and

a third sensor responsive to the presence or absence of a media element at an input to the front conveyor to stop operation of the rear conveyor.

THE REJECTIONS

The Examiner relies upon the following¹ as evidence of unpatentability:

Golicz	US 4,928,944	May 29, 1990
Holbrook	US 4,978,114	Dec. 18, 1990
Groel	US 5,358,229	Oct. 25, 1994
Bridges	US 5,641,155	Jun. 24, 1997
Wilson	US 6,550,764 B2	Apr. 22, 2003

The following rejections by the Examiner are before us for review:

1. Claims 2-6, 8-10, 12 and 13 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.
2. Claims 2, 3, 5, 6, 8, 10 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Holbrook in view of Bridges, and further in view of Wilson.
3. Claims 4 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Holbrook in view of Bridges and Wilson, and further in view of Golicz.
4. Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Holbrook in view of Bridges and Wilson, and further in view of Groel.

¹ Lohmann (U.S. Patent 5,449,166 issued Sep. 12, 1995) will not be considered in this Appeal. While Lohmann has been listed in section 8 (Evidence Relied Upon) of the Examiner's Answer (Ans. 3), Lohmann has not been applied as prior art to reject any of the claims on appeal (Ans. 3, 4, 9 and 10; *see also* Final Rejection 2-9).

ISSUES

The issues before us are: (1) whether the Examiner erred in concluding that claims 2-6, 8-10, 12 and 13 are indefinite (Ans. 3); and (2) whether the combined teachings of Holbrook and Bridges would have led one having ordinary skill in the art to modify the Holbrook media dispenser to include a second height adjustment mechanism for the single media separator comprising a second nip roller as called for in claim 13 (App. Br. 7).

ANALYSIS

Rejection under 35 U.S.C. § 112

Appellants have not contested the rejection of claims 2-6, 8-10, 12 and 13 under 35 U.S.C. § 112, second paragraph (App. Br. 3).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

Therefore, we conclude that Appellants have not demonstrated that the Examiner erred in rejecting claims 2-6, 8-10, 12 and 13 under 35 U.S.C. § 112, second paragraph.

Prior Art Rejection

Appellants contend that the combined teachings of Holbrook and Bridges do not describe a second height adjustment mechanism to allow media elements to pass through one at a time as separated media elements as called for in claim 13 (App. Br. 7).

The Examiner found that Holbrook describes “a single media separator (including 169) comprising a second nip roller (169) cooperating with the driven front conveyor (including 80) to define a nip to separate the shingled media elements (3) received from the rear conveyor (including 10) into single media elements.” (Ans. 5). The Examiner stated that he is relying upon “at least elements 10, 80 and 169 of the Holbrook patent to disclose a single media separator.” (Ans. 12).

The Examiner found that Bridges describes a nip roller (17) having a height adjustment mechanism (including 44) that allows the nip roller (17) to be adjusted such that a single flat element (72a in Fig. 4a) can be fed (Ans. 6).

The Examiner concluded that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the single media separator of Holbrook with a single media separator that can be adjusted via a second height adjustment device, in order to allow adjustments to be made responsive to the coefficient of friction of the material in the stack, as taught by Bridges.” (Ans. 6).

Claim 13 calls for, *inter alia*,

a single media separator comprising a second nip roller cooperating with said driven front conveyor to define a nip to separate said shingled media elements received from the rear conveyor into single media elements;

a second height adjustment mechanism for setting a second vertical spacing between the second nip roller and the front conveyor to allow said media elements to pass through said nip one at a time as separated media elements;

(Claims Appendix, App. Br. 14)

Holbrook describes an envelope feeder 1 having a belt frame assembly 161 including a roller 169 and endless belts 181, 183; and a second or secondary frame 185 including rollers 217, 219 and endless belts 227, 229 (col. 3, ll. 25-col. 4, l. 10; and figs. 2, 4, 5). Holbrook shows multiple envelopes passing below roller 169 in figures 1 and 2. Holbrook further describes “that the first frame mounted belt roller assembly provides preshingling to the second belt roller assembly.” (col. 4, ll. 20-22). Holbrook still further describes “[l]ocated above a forward belt drive is a reverse belt drive assembly. The reverse belt drive is comprised of a first pivot frame rotatably supporting a plurality of rollers having a first belt extending around respective roller sets for preshingling a portion of bottom group of envelopes.” (col. 1, ll. 51-56).

We find that in Holbrook, the belt frame assembly 161 including roller 169 and endless belts 181, 183 is the first frame mounted belt assembly. As noted above, Holbrook’s first belt frame assembly 161 is not a single media separator, as it is intended to provide preshingling of multiple envelopes to the second frame 185.

We find that the Examiner’s proposed combination of Holbrook and Bridges, replacing Holbrook’s preshingling media separator 10, 80, 169, erroneously referred to by the Examiner as a single media separator, with a single media separator that can be adjusted via a second height adjustment as taught by Bridges, would render Holbrook’s first belt frame assembly 161 including roller 169 and endless belts 181, 183 inoperable for its intended purpose, that is, inoperable to provide preshingling of multiple envelopes to the second frame 185. The Examiner’s obviousness rejection does not take into account or address this different function or purpose for the components

proposed to be replaced. As such, the underpinnings of the reasoning articulated by the Examiner are flawed.

The Examiner has not relied on Wilson for any teaching that would remedy the deficiency in the combination of Holbrook in view of Bridges (Ans. 6).

Thus, we conclude that the Examiner has not established that the combined teachings of Holbrook and Bridges render obvious a media dispenser that includes a single media separator having a second height adjustment mechanism to allow media elements to pass through one at a time as separated media elements as called for in claim 13.

Accordingly, we conclude that Appellants have demonstrated that the Examiner erred in rejecting claim 13 over Holbrook in view of Bridges and Wilson. Appellants have likewise demonstrated error in the Examiner's rejection of claims 2, 3, 5, 6, 8 and 10, which depend from claim 13.

The Examiner has not relied on Golicz or Groel for any teaching that would remedy the deficiency in the combination of Holbrook in view of Bridges (Ans. 9, 10). We thus conclude that the Examiner also erred in rejecting claims 4 and 12 over Holbrook in view of Bridges, Wilson and Golicz; and in rejecting claim 9 over Holbrook in view of Bridges, Wilson and Groel.

CONCLUSIONS

Appellants have not established that the Examiner erred in concluding that claims 2-6, 8-10, 12 and 13 are indefinite.

Appellants have established that the Examiner erred in concluding that the combined teachings of Holbrook and Bridges would have led one

Appeal 2009-002687
Application 10/660,533

having ordinary skill in the art to modify the Holbrook media dispenser to include a second height adjustment mechanism for the single media separator comprising a second nip roller as called for in claim 13.

DECISION

The decision of the Examiner to reject claims 2-6, 8-10, 12 and 13 under 35 U.S.C. § 112 is affirmed. The decision of the Examiner to reject claims 2, 3, 5, 6, 8, 10 and 13 over Holbrook in view of Bridges and Wilson; claims 4 and 12 over Holbrook in view of Bridges, Wilson and Golicz; and claim 9 over Holbrook in view of Bridges, Wilson and Groel is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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1075 NORTH SERVICE ROAD WEST
SUITE 203
OAKVILLE, ON L6M 2G2 CA
CANADA